

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) OLK-002.01
	Application Number 10/595,291	Filed (371 date) Apr. 5, 2006
	First Named Inventor Cheal, E.	
	Art Unit 3774	Examiner Schillinger, Ann M.
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the _____ /SCOTT E. KAMHOLZ/ <input type="checkbox"/> applicant/inventor. _____ Signature <input type="checkbox"/> assignee of record or the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is _____ Scott E. Kamholz enclosed. _____ Typed or printed name (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. _____ 617-832-1176 Registration number <u>48,543</u> _____ Telephone number <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number _____ June 30, 2008 _____ Date</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>		

Applicants' Memorandum in Support of Their Pre-Appeal Brief Request for Review

The Examiner has rejected all pending claims (1-30) under 35 U.S.C. § 103(a) as reciting subject matter unpatentable over U.S. Pat. No. 4,908,032 to Keller ("Keller") in combination with various other references.

Applicants ask the panel to reconsider and reverse the rejections because the Examiner did not show how every element of claim 1 is disclosed in the references applied. Thus the Examiner has not made out a proper *prima facie* case of unpatentability.

Even a cursory review of the rejected claims shows that the Examiner has not shown that Keller in combination with the other references teach all elements of the rejected claims:

1. Claim 1 requires that the locking band have a constant cross-sectional geometry along its length. The Examiner identified Keller's end face 10 as meeting the recited locking band. But Keller's end faces have serrations by design. These serrations narrow to points (see Fig. 1); the end face's cross-sectional geometry therefore varies as those tips narrow. The end faces consequently do not and cannot have a constant cross-sectional geometry along their lengths.
2. Claim 1 requires that the spigot's locking band engage the receiving portion of the stem bore by friction-tight press-fit as the proximal body member becomes fully seated on the stem member. The Examiner nowhere explained how end face 10 engages anything by friction-tight press-fit. Indeed, brief review of Keller shows that end face 10 does not participate in a friction-tight press-fit. End face 10 is a serrated edge that is held against a similar serrated edge on end face 9 (or adaptor 14) by screw 11. The teeth of the serrated edges prevent relative rotation but do not provide a friction-tight press-fit. Absent the compression provided by screw 11, ends 9 and 10 would fall apart; they are thus clearly not held together by a friction-tight press-fit.
3. Claim 1 requires that the receiving portion of the stem bore have a cross-sectional geometry along its length that is sized smaller than that of the locking band to permit the friction-tight press-fit engagement. Keller cannot possibly meet this limitation; his arrangement instead requires that the end faces have the same cross-section geometry so that the respective teeth contact one another to prevent relative rotation.

The rejections are clearly erroneous and should be reversed. Accordingly, Applicants respectfully ask the panel to withdraw the obviousness rejections of claims 1-30. Applicants will resolve the outstanding double patenting rejection of claims 1, 2, and 11-16 upon an indication that some or all claims are otherwise allowable.

If the panel of examiners develops any proposals for minor amendments of the rejected claims that would place these claims into a condition for allowance, Applicants would welcome the suggestion of such amendments in response to this Request.

Respectfully submitted,

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